CASE SUMMARY

Complaint against the Buildings Department, Lands Department and Planning and Lands Bureau for maladministration relating to the title deeds of houses in Fairview Park

The Complaint

This is a complaint against the Buildings Department (BD), Lands Department (Lands D) and Planning and Lands Bureau (PLB) about the following matters relating to the title deeds of houses in Fairview Park -

(a) issuing Certificates for Occupation (OCs) to houses which did not comply with the Buildings Ordinance (BO) and did not qualify for Occupation Permits (OPs);

(b) failing to safekeep the building plans of the houses, resulting in loss of the authorized plans on the original structures; and

(c) unjustifiably requiring owners of the houses to submit Certificates of Safety.

Background Information Provided by the Complainant

2. The complainant alleged that the complainee organizations issued OCs instead of OPs to conceal the fact that some houses in Fairview Park did not comply with the BO. The complainant also alleged that BD had no records of the approved plans of the houses which could enable owners to identify and remove unauthorized building structures (UBW) from the original structures. Furthermore, the complainant was dissatisfied with BD’s requests to owners for submission of Certificates of Safety.

Observations and Opinions

Complaint point (a)

3. According to PLB which also replied on behalf of BD and Lands D, construction of private buildings in Hong Kong is governed by the BO or the Buildings Ordinance (Application to the New Territories) Ordinance (BO(ANT)O). For buildings governed by the BO, an OP is required before the building can be occupied. Under the BO(ANT)O, some buildings in the New Territories meeting certain exemption criteria (exempt houses) are exempted from the provisions of the BO, and issuance of an OP prior to occupation is not required.

4. The development of Fairview Park included land that was subject to the BO(ANT)O, the lease conditions of which permitted exempt houses to be erected subject to conditions imposed by the then Secretary for the New Territories, and a certificate of occupation issued by BD stating that the house was in all respects suitable for occupation.

5. Thus Fairview Park comprises houses issued with either OPs or OCs. The main differences between these two types of houses relate to their sizes and heights, resulting in their coming under the purview of the BO or BO(ANT)O respectively. All houses in the development met the technical standards and safety requirements at the time of completion and were erected in compliance with the lease conditions. As no OP is required under the law for an exempt house, the fact that such a house was not issued with an OP does not affect its legal status and will not result in a defective title.

6. Having examined the information provided by PLB and scrutinized the two ordinances in question, this Office is satisfied that OPs are not required for exempt houses in Fairview Park. For these houses, issuance of OC is not required by law but is an administrative measure in compliance with the conditions imposed on exempt houses by the Secretary for the New Territories.

7. This Office also finds the complainant’s concern that transactions had to be aborted because of defective title to be unjustified. From September 1999 to February 2000, more than a hundred houses in Fairview Park had changed ownership. These involved both houses issued with OPs and exempt houses issued with OCs. The complainant had not produced any evidence to show any transaction had been aborted because it had an OC instead of an OP.

8. In view of the above, The Ombudsman considers that the allegation that OCs were issued to conceal non-compliance with the BO is unfounded and complaint point (a) is **unsubstantiated**.

9. The Ombudsman appreciates the complainant’s concern. It is not easy for a layman to understand the legal niceties that had resulted in some houses in the same residential development being issued with OPs and others with OCs. The Government had explained publicly the reasons for this on a number of occasions, and had given public assurances that “there are no doubts about the legal status or the validity of the titles of those residential units which were issued with Certificates of Occupation.” The Court of Appeal also commented on and affirmed the validity of titles to properties in Fairview Park in a recent case. With such clear pronouncements from the Government and the Court of Appeal, The Ombudsman hopes that the complainant and the public can feel assured of the validity of the titles of houses in Fairview Park.

Complaint point (b)

10. BD is responsible for the safekeeping of building plans and it acknowledged that the plans of some houses in Fairview Park were missing. PLB attributed this to the massive number of plans involved and the long time taken in developing the entire Fairview Park project. Over the years, there had been many requests to view the plans from various sections within BD, and from owners and Authorized Persons. Plans were kept in different files at various places, and BD had moved office a couple of times. This resulted in some plans being misplaced or lost.

11. BD has now retrieved most of the building and structural plans. It is liaising with Lands D, as successor to the Secretary for the New Territories in land matters, to locate the missing plans.

12. This Office notes that BD has taken a number of measures to overcome the loss of some building plans of houses in Fairview Park. The department has also introduced improvement measures such as bar-coding and microfilming to remedy identified deficiencies in its records management system. Nevertheless, these do not alter the fact that BD had indeed lost some of the house plans of Fairview Park and had therefore failed in its responsibility as custodian of building plans insofar as this particular development is concerned. The Ombudsman therefore finds that complaint point (b) is **substantiated**.

Complaint point (c)

13. According to PLB, many houses in Fairview Park had undergone internal alterations. In some cases, alterations to load-bearing walls might have affected their structural stability. Alteration works without BD's approval are UBW. BD introduced the "Certificate of Safety" in 1992. Owners wishing to have their UBW tolerated were required to appoint Authorized Persons/Registered Structural Engineers to certify the structural safety of their houses. This safety assurance system was enhanced in July 1999, whereby any unauthorized structural alterations reported after 2 July 1999, and any unauthorized alterations reported earlier but a Certificate of Safety had not been submitted before 31 December 1999, will be considered as "significant new unauthorized building works" and subject to immediate enforcement action.

14. As many houses in the development are semi-detached houses, alterations to the load-bearing walls of one house might well affect the structural safety of the adjoining house. The Ombudsman therefore considers that BD is justified in being concerned about the structural stability of houses that had undergone structural alterations. Where a proper Certificate of Safety was issued, the UBW concerned will be tolerated so long as they remain safe. The Ombudsman therefore concludes that complaint point (c) is **unsubstantiated**.

Conclusion

15. Overall, The Ombudsman considers that the complaints against PLB and Lands D are **unsubstantiated**, while that against BD is **partially substantiated**.

Recommendation

16. The Ombudsman recommends BD to re-create its collection of plans for Fairview Park by duplicating all plans in the possession of the management company. In the case of missing plans, BD may adopt a snap-shot approach by adopting plans that accompanied the submission of Certificates of Safety and deem these to be authorized plans as from the date of submission.

Response from PLB

17. PLB, on behalf of BD and Lands D, states that although plans had been borrowed from the Fairview Park Property Management Ltd. for reference in the past, an effectively complete set of structural records has now been located from Government sources, and it will not be necessary for BD to re-create its collection of plans for Fairview Park. As a related issue, BD is in the process of microfilming the plans kept in the department. In due course, a complete set of plans for Fairview Park will be available for public inspection.

Final Remarks

18. The Ombudsman is pleased to know that PLB, BD and Lands D have accepted the conclusions of this investigation and that BD is taking action to ensure that it will in due course have a complete set of plans for Fairview Park.

Office of The Ombudsman
Ref.: OMB 2000/0674-0676
January 2001